

EX PARTE OR LATE FILED **ORIGINAL**

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June 22, 1994

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William Caton, Secretary  
Federal Communications Commission  
1919 M Street, NW  
Room 222  
Washington, DC 20554

Attn: William E. Kennard, General Counsel  
Sara Seidman, Special Assistant  
Peter Tenhula, Staff Attorney

Re: General Docket No. 90-314✓  
PP Docket No. 93-253

**EX PARTE PRESENTATION**

Dear Mr. Caton:

This letter is to confirm in the record the ex parte meeting between the undersigned, on behalf of the rural telephone companies represented by Blooston, Mordkofsky, Jackson & Dickens, and Sara Seidman and Peter Tenhula of the Office of General Counsel on Monday, June 20, 1994. As discussed at that meeting, some of the auction rule change proposals which the Commission has under consideration will be beneficial in meeting Congress' mandate for designated entity participation, so long as certain refinements are adopted. These refinements would help to ensure the participation of rural telephone companies and other designated entities in PCS. We also wish to provide herein information requested by the General Counsel's office about the rural telephone industry.

It is our understanding that the Commission is considering a change in the definition of "rural telephone company" as a designated entity. The new definition would include any telephone company with fewer than 100,000 access lines. The staff has inquired whether it is also necessary to incorporate into this definition a population density criterion. As discussed, such criterion may lead to undesirable results. As the Commission itself noted when adopting the 50,000 access line standard in the current definition, this standard excluded the 29 largest telephone

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companies, including any carrier serving an appreciable metropolitan area. The 100,000 access line standard will do the same, since the additional telephone carriers allowed by that benchmark serve less populated areas that will certainly benefit from telephone company participation in PCS. A list of these telephone companies, and the populations they serve, is attached hereto.

Whether the Commission adopts the 100,000 figure, or uses a 50,000 access line mark, a population density criterion should be avoided. Such criterion may unnecessarily exclude carriers who extend a small percentage of their lines into a more populated area for the benefit of the rural communities they serve. This is especially true in western and mid-western states, where rural areas can be found just outside of cities such as Albuquerque, Phoenix, and Oklahoma City. We have filed comments on behalf of our client Chickasaw Telephone Company demonstrating this fact. The Commission can take official notice that the independent telephone industry grew out of the need for service in those areas viewed as unprofitable by the Bell Companies. Only a handful of local exchange carriers have gained a foothold in urban areas, and these carriers would be among those excluded under the 100,000 access line standard.

As discussed, we understand that a proposal is under consideration which would establish the newly created 30 MHz PCS spectrum block C (and perhaps the 10 MHz block F) as an "entrepreneur's band." It is our understanding that such proposal, if adopted, would probably define eligibility for the band as entities with gross annual revenues of under \$100 million, and that designated entities bidding on this band will be allowed to attract investors under limited circumstances. It is respectfully submitted that eligibility for the entrepreneur band should be defined as less than \$100 million in gross annual revenues or a local exchange telephone company with under 100,000 access lines, including affiliates (or whatever access line standard is ultimately adopted). This alternative definition would ensure that those "families" of smaller telephone companies that serve rural areas will not be excluded from participation in PCS (particularly in their BTA), because of their aggregate revenues. We are aware of certain instances where rural telephone companies under common ownership may otherwise be excluded, especially where their owners may operate other businesses which generate unregulated revenues. As discussed above, use of either a 50,000 or 100,000 access line standard will still restrict participation in PCS to the smaller local exchange carriers that do not enjoy any undue advantage in the auction.

In the alternative, we urge the Commission to clarify its attribution rules to allow rural telephone companies which are commonly owned by other businesses to demonstrate that revenues from these other businesses are not available for the PCS

operation, and therefore should not be included in the aggregated revenues used to determine eligibility for the entrepreneur band. If the Commission declines to adopt the alternative 100,000 access line eligibility standard, it is important that potential entrepreneurs be able to know with certainty which revenues of related companies will be attributed to them. Given the bid forfeiture penalties adopted for high bidders that are found to be ineligible, the Commission should establish a mechanism for rendering prompt declaratory rulings that will allow applicants to know in advance whether they will be disqualified from the auction.

If necessary to assure the Commission that rural telephone companies are not being acquired for the purpose of gaining access to the entrepreneur band, the Commission could require that any applicant seeking to qualify under the access line criterion demonstrate that the ultimate parent company of that entity was involved directly or through subsidiaries in the rural telephone industry, prior to the effective date of the auction legislation.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Ben Dickens, Jr.", written in dark ink.

Benjamin H. Dickens, Jr.

ATTACHMENT

<u>Telephone Company</u>	<u># Access Lines<sup>1</sup></u>	<u>Community Served</u>	<u>Population<sup>2</sup></u>
North State	93,457	High Point, North Carolina	69,496
Roseville	86,317	Roseville, California	44,685
Concord	81,256	Concord, North Carolina	27,347
Illinois Consolidated	79,984	Mattoon, Illinois	18,441
Lufkin-Conroe	79,032	Lufkin, Texas	30,206
Virgin Islands	54,142	St. Thomas, U.S. Virgin Islands	48,166

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<sup>1</sup> United States Telephone Association, 1993 Statistics of the Local Exchange Carriers. It is possible that a few carriers which were near the 50,000 access line mark have since surpassed this benchmark. However, this information was not available in time to be compiled and included with this filing.

<sup>2</sup> 1990 Census

**CERTIFICATE OF SERVICE**

I, Benjamin H. Dickens, Jr. hereby certify that I am an employee in the Law Offices of Blooston, Mordkofsky, Jackson & Dickens, and that on this 22nd day of June, 1994, I caused to be hand delivered a copy of the foregoing "**EX PARTE PRESENTATION**" to the following:

Secretary  
Federal Communications Commission  
1919 M Street, NW  
Washington, DC 20554

Chairman Reed Hundt  
Federal Communications Commission  
1919 M Street, NW Room 184  
Washington, DC 20554

Commissioner James Quello  
Federal Communications Commission  
1919 M Street, NW Room 802  
Washington, DC 20554

Commissioner Andrew Barrett  
Federal Communications Commission  
1919 M Street, NW Room 844  
Washington, DC 20554

Commissioner Susan Ness  
Federal Communications Commission  
1919 M Street, NW Room 832  
Washington, DC 20554

Commissioner Rachelle Chong  
Federal Communications Commission  
1919 M Street, NW Room 844  
Washington, DC 20554

Ralph Haller, Chief  
Private Radio Bureau  
Federal Communications Commission  
2025 M Street, NW Room 500  
Washington, DC 20554

Gerald P. Vaughan, Deputy Bureau Chief  
Common Carrier Bureau  
Federal Communications Commission  
1919 M Street, NW Room 500  
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Benjamin H. Dickens, Jr.